Harris Mohd Salleh v Ismail bin Majin, Returning Officer & Ors and another application

HIGH COURT (KOTA KINABALU) — ELECTION PETITIONS NO K5 OF 1999 AND K11 OF 1999
MUHAMMAD KAMIL J
22 FEBRUARY 2000

Civil Procedure *— Pleadings — Striking out petition — Insufficient particulars in petition — Whether a good reason for striking out petition — Rules of the High Court 1980 O 18 r 19*

Election *— Petition — Challenge to electoral roll — Challenge made by way of election petition, whether valid — Whether court has jurisdiction to hear challenge to electoral roll which is vitiated by illegality*

Election *— Petition — Service — Modes of — Whether modes of service under second limb of r 15 Election Petition Rules 1954 mandatory — Whether service of notice and petition can be effected by way of personal service — Election Petition Rules 1954 r 15*

The two election petitions — Election Petition No K 5/1999 and K 11/1999 — were consolidated. The respondents raised three preliminary objections: (i) there was non-compliance with r 15 of the Election Petition Rules 1954 ('the Rules') — the service of the notice of the petition personally on the respondent was bad as it was not one of the modes prescribed by r 15 of the Rules and the service was effected by delivering to the respondents' own solicitors firm which was not appointed by the respondent as stipulated under rr 10 and 15; (ii) an electoral roll cannot be challenged for illegality by way of an election petition; and (iii) the petition should be struck out under O 18 r 19 of the Rules of the High Court 1980 as there was insufficient particulars.

Held, dismissing the preliminary objections:

(1) The second limb of r 15 which prescribes the modes of service are not mandatory. 'Personal service' is implicit in r 15. The purpose of service under r 15 is to give notice that a petition in respect of a particular election in a particular constituency has been presented. Personal service is the best form of service although there is no express provision for personal service in the rule in as much as there is no prohibition of personal service in the rule. A personal service within the prescribed time is good service for all intents and purposes of r 15 of the Rules (see p 439E–F).

(2) In the event that a person does not send or leave at the office of the Registrar, a formal writing stating that he will appoint an advocate or he intends to act for himself and no address is given, should there be a petition which affects him, a personal service may be effected. The discretion is with the court to decide whether it is sufficient if service is effected by serving the

petition, for example on the firm of the respondents' solicitor (see p 440E–G).

(3) An Election Court has the jurisdiction to hear a challenge in respect of an electoral roll which is vitiated by an illegality, for example the entry into an electoral roll of names of non-citizens or disqualified citizens who are not entitled to vote in any election to Parliament or State Assembly. There is no provision in any written law that prohibits a challenge to an electoral roll in an election court and that it may be brought before another forum which forum has not been established by the law (see p 443F–G); *Wong Phin Chung v The Election Commission & Ors* (Election Petition No K I of 1994) and *Tg Nawawi bin Tengku Ab Kadir v Lokman bin Muda & Ors* [1996] 1 CLJ 551 distinguished.

(4) An application for striking out a petition simply based on the ground that there are insufficient particulars therein cannot be a good reason for striking out the petition (see p 444F). The particulars, if insufficient, may be obtained from the petitioner by adopting the procedures as laid down in the Rules of the High Court 1980 (see p 445A).

[Bahasa Malaysia summary

Kedua-dua petisyen pilihanraya — Petisyen Pilihanraya No K 5/1999 dan K 11/1999 — telah disatukan. Responden telah membangkitkan tiga bantahan awal: (i) terdapat ketidakpatuhan k 15 Kaedah-Kaedah Petisyen Pilihanraya 1954 ('kaedah-kaedah tersebut') — penyampaian notis petisyen tersebut secara peribadi ke atas responden adalah tidak baik kerana ia bukanlah salah satu daripada cara yang diperuntukkan oleh k 15 kaedah-kaedah tersebut dan penyampaian telah dibuat dengan menyerahkan kepada firma responden sendiri yang tidak dilantik oleh responden-responden seperti yang diperuntukkan di bawah kk 10 dan 15; (ii) suatu senarai pengundi tidak boleh dicabar untuk kepenyalahan di sisi undang-undang melalui suatu petisyen pilihanraya; dan (iii) petisyen sepatutnya dibatalkan di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 oleh kerana terdapat butiran-butiran yang tidak mencukupi.

Diputuskan, menolak bantahan-bantahan awal:

(1) Bahagian kedua k 15 yang memperuntukkan cara-cara penyampaian adalah bukan mandatori. 'Penyampaian peribadi' adalah tersirat di dalam k 15. Matlamat penyampaian di bawah k 15 adalah untuk memberikan notis bahawa suatu petisyen berkenaan dengan suatu pilihanraya tertentu di dalam suatu kawasan telah dikemukakan. Penyampaian peribadi adalah bentuk penyampaian yang terbaik walaupun tiada peruntukan untuk pemyampaian peribadi di dalam kaedah seperti juga ia

tidak menghalang penyampaian peribadi di dalam kaedah. Suatu penyampaian peribadi di dalam tempoh yang diperuntukan adalah penyampaian yang baik bagi maksud dan tujuan k 15 kaedah-kaedah tersebut (lihat ms 439E–F).

(2) Di dalam keadaan di mana seorang tidak menghantar atau meninggalkan di pejabat Pendaftar, suatu kenyataan rasmi bahawa beliau akan melantik seorang peguam atau beliau berniat untuk mewakili dirinya sendiri dan tiada alamat diberikan, jika terdapat petisyen yang berkenaan dengannya, suatu penyampaian peribadi boleh dibuat. Budi bicara adalah di tangan mahkamah untuk memutuskan sama ada ia adalah mencukupi jika penyampaian dibuat dengan menyampaikan petisyen ke atasnya, sebagai contoh kepada firma peguam responden-responden (lihat ms 440E–G).

(3) Suatu mahkamah pilihanraya mempunyai bidang kuasa untuk mendengar suatu pertikaian berkenaan dengan senarai pengundi yang menjadi tak sah melalui suatu kepenyalahan, sebagai contoh kemasukan ke dalam senarai pengundi nama-nama bukan warganegara atau warganegara (yang hilang kelayakan) yang tidak berhak untuk mengundi di dalam sebarang pilihanraya wakil Parlimen atau Perundangan Negeri. Tiada peruntukan di dalam undang-undang bertulis yang menghalang suatu cabaran kepada senarai pengundi di dalam mahkamah pilihanraya dan bahawa ia boleh dibawa di hadapan suatu forum yang lain di mana forum tersebut belum lagi diwujudkan oleh undang-undang (lihat ms 443F–G); *Wong Phin Chung v The Election Commission & Ors* (Petisyen Pilihanraya No K I Tahun 1994) dan *Tg Nawawi bin Tengku Ab Kadir @ T Putra v Lokman bin Muda & Ors* [1996] 1 CLJ 551 dibeza.

(4) Suatu permohonan untuk pembatalan suatu petisyen hanya semata-mata berdasarkan alasan bahawa terdapat butiran-butiran yang tidak mencukupi di dalamnya tidak boleh menjadi sebab yang baik untuk membatalkan suatu petisyen (lihat ms 444F). Butiran-butiran tersebut, jika tidak mencukupi, boleh diperolehi daripada pempetisyen dengan menerima pakai prosedur-prosedur seperti yang diperuntukkan di dalam Kaedah-Kaedah Mahkamah Tinggi 1980 (lihat ms 445A).]

Notes

For a case on stirking out a petition, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 3726.

For cases on election petition generally, see 6 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 1521–1559.

For cases on service of election petition, see 6 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 1558–1559.

Cases referred to

Ah Thian v Government of Malaysia [1976] 2 MLJ 112 (refd)
Attorney General of Duchy of Lancaster v London & North Western Railway Co [1892] 3 Ch 274 (refd)
Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd [1993] 3 MLJ 36 (refd)
Bong Geok Beng v Ahmad Nordin bin Mohamed Amin & Anor [1980] 1 MLJ 167 (refd)
Chong Thain Vun v Watson & Anor [1968] 1 MLJ 65 (refd)
Devan Nair v Yong Kuan Teik [1967] 1 MLJ 261 (refd)
Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor [1992] 1 MLJ 697 (refd)
Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187 (refd)
Muip bin Tabib v Dato James Wong [1971] 1 MLJ 246 (refd)
Nair v Teik [1967] 2 All ER 34 (refd)
PP v Lau Kee Hoo [1983] 1 MLJ 157 (refd)
Raja Ahmad bin Raja Sulaiman v Haji Mohd Daud bin Ja'afar & Anor (Petisyen Pilihanraya No 33–5–Tahun 1995, Kota Bharu) (unreported) (refd)
Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd [1993] 3 MLJ 16 (refd)
Rhina Bhar @ Rani Raj Pal v Karpal Singh a/l Ram Singh & Ors [1995] 4 CLJ 64 (refd)
Sim Kee Chon v Superintendent of Pudu Prison [1985] 2 MLJ 385 (refd)
Telok Blangah Election, Re [1981] 1 MLJ 278 (refd)
Tengku Korish v Mohamed bin Jusoh & Anor [1970] 1 MLJ 6 (refd)
Tg Nawawi bin Tengku Ab Kadir @ T Putra v Lokman bin Muda & Ors [1996] 1 CLJ 551 (distd)
Wong Phin Chung v The Election Commission & Ors (Election Petition No K I of 1994) (distd)

Legislation referred to

Election Act 1958 s 15
Election Petition Rules 1954 rr 10, 15
Election (Registration of Electors) Regulations (Sabah) 1971
Federal Constitution arts 4(1), 113(5), 119(1)
Kelantan Constitution art XXXIA
Rules of the High Court 1980 O 18 r 19(1)

Ansari Abdullah (*Ansari Abdullah*) for the petitioner in Election Petition No K5 of 1999.

John Sikayun (*PK Lim* and *Alex Decena* with him) for the second respondent in Election Petition No K5 of 1999.

Yunof Maringking (*Anita Paruik* with him) for the petitioner in Election Petition No K11 of 1999.

Abu Bakar Jais (Senior Federal Counsel, Attirney General's Chambers) for the first and second respondents in Election Petition No K11 of 1999.

Muhammad Kamil J: There are two petitions, Election Petition No K 5/1999 and K 11/1999, which are consolidated into one, as they concern the same election in respect of the same constituency N 13 Likas, and between the parties which are invariably the same, except that in Petition No K 11/1999 the petitioner, Chong Eng Leong, appears as the sixth respondent in the former petition. As the issue in Election Petition K 5/1999 involved only the petitioner and Yong Teck Lee (second respondent), the first and seventh respondents were excluded, whilst the third, fourth and fifth respondents were not represented and they too dropped out.

The preliminary objections and the notice of motions raised by the respondents may be grouped into three main topics:

Rule 15 of the Election Petition Rules 1954

As to the non-compliance with r 15 of the Election Petition Rules 1954, the questions raised are as follows:

(1) whether the provisions in r 15 are mandatory; and

(2) whether personal service within the 15 days limit is sufficient to satisfy r 15.

Rule 15 of the Election Petition Rules 1954 states:

> Notice of the presentation of a petition, accompanied by a copy thereof, shall, within fifteen days of the presentation of the petition, be served by the petitioner on the respondent. Such service may be effected either by delivering the notice and copy aforesaid to the advocate appointed by the respondent under r 10 or by posting the same in a registered letter to the address given under r 10 at such time that, in the ordinary course of post, the letter would be delivered within the time above mentioned, or if no advocate had been appointed, or no such address given, by a notice published in the Gazette or in a newspaper circulating within the constituency or electoral ward in which the election was held, or posted on the notice board of the High Court in the State in which that constituency or electoral ward is situated, stating that such petition has been presented, and that a copy of the same may be obtained by the respondent on application at the office of the Registrar.

There are two limbs in this r 15: (1) as to time of service; and (2) as to the mode of service. In the first limb, the time of 15 days of the presentation of the petition, is expressed in mandatory terms; the word used is 'shall'; it is therefore mandatory that such service must be made within the prescribed time, ie 15 days of the presentation of the petition, and failure to comply strictly with the time for service will render the petition a nullity. There is a plethora of cases in support of this; in *Devan Nair v Yong Kuan Teik* [1967] 1 MLJ 261 where Lord Upjohn said at p 264:

> So the whole question is whether the provisions of r15 are 'mandatory' in the sense in which that word is used in the law, ie that a failure to comply strictly with the times laid down renders the proceedings a nullity; ... .

His Lordship said further at p 265:

> On the whole matter their Lordships have reached the conclusion that the provisions of r 15 are mandatory, and the petitioner's failure to observe the time for service thereby prescribed rendered the proceedings a nullity.

See also *Muip bin Tabib v Dato James Wong* [1971] 1 MLJ 246; *Tengku Korish v Mohamed bin Jusoh & Anor* [1970] 1 MLJ 6; *Chong Thain Vun v Watson & Anor* [1968] 1 MLJ 65 and *Rhina Bhar @ Rani Raj Pal v Karpal Singh a/l Ram Singh & Ors* [1995] 4 CLJ 642.

The second limb of r 15 prescribes the modes of service which are not mandatory, and the word used is 'may' which is directory. There are five modes of service mentioned in r 15 which are specially mentioned in the alternatives, and a petitioner may choose to comply with at least one of the modes, eg by Gazette notification or by advertisement in newspaper, etc. It is clear that the mode of service is directory and that any one mode of service may be used. That is to say, a petitioner may observe one mode of service, it is sufficient for the purpose of service under r 15. This found support in *Muip bin Tabib v Dato James Wong* where BTH Lee J said at p 249:

> To my mind r 15 is not mandatory as to the mode of service. The word 'shall' appears in the first sentence of the rule, which indicates that the rule is mandatory, but I am of opinion that where the rule is directory as to the mode of service, substantial compliance is sufficient.

See *Raja Ahmad bin Raja Sulaiman v Haji Mohd Daud bin Ja'afar & Anor* (Petisyen Pilihanraya No 33–5–Tahun 1995, Kota Bharu) (unreported).

Personal Service

'Personal Service' is implicit in r 15. The purpose of service under r 15, is to give notice that a petition in respect of a particular election in a particular constituency has been presented. In my view. personal service is the best form of service although there is no express provision for personal service in the rule in as much as there is no prohibition of personal service in the rule. A personal service within the prescribed time is good service to all intents and purposes — r 15. I am fortified in my view by the following authorities:

In *Nair v Teik* [1967] 2 All ER 34, the Privy Council held that r 15 was not complied with as there was no personal service nor notice in the Gazette within the ten days of the presentation of the petition and that the provisions of r 15 are mandatory. This was followed in *Chong Thain Vun*'s case where Lee Hun Hoe J (as he then was) said:

> ... personal service which seems to be possible under s 7(2) of the Courts of Judicature Act 1964 was not considered. The truth is that petitioners were doubtful that personal service was open to them as r 15 is not as precise and clear as one would like it to be on the question of personal service.

That personal service is possible seems implicit from the language used in *Devon Nair v Yong Kuan Teck* by Lord Upjohn when he said at p 264:

> Rule 15 was not complied with strictly for there was no personal service and no notice in the Gazette within ten days of the presentation of the petition.

In *Re Telok Blangah Election* [1981] 1 MLJ 278, Sinnathuray J held that (at p 278):

> (1) rule 15 requires that notice of the presentation of a petition accompanied by a copy thereof shall within ten days of the presentation of the petition

> be served by the petitioner on the respondent. Such service means personal service and personal service means serving the respondent with a copy of the election petition and showing him a sealed copy if he desires it. However, leaving copy of the petition with a subordinate officer of Ong Kok Min was not personal service on him; ... .

In the case of Petition No K 5/1999, the notice of the presentation of the petition had been served on the respondent's own solicitors firm which accepted service on his behalf although it was not appointed under r 10. There is no doubt at all that the respondent knew of the service of the notice on the firm which had accepted it on his behalf and he had not objected to the service of the notice on his solicitor's firm. It seems to me that the service is good as notice received is notice served. Subsequently, the respondent appointed a firm of solicitors under r 10 to act for him. Rule 10 of the Election Petition Rules 1954 states:

> Appointment of advocate to respondent
>
> Any person returned may at any time, after he is returned, send or leave at the office of the Registrar a writing, signed by him, appointing an advocate to act for him in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within Malaysia at which notices addressed to him may be left. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.

There is no evidence that the respondent had promptly left at the office of the registrar, a writing appointing an advocate to act for him or stating that he intends to act for himself, and in either case, giving an address within Malaysia at which notices addressed to him may be left. Thus the petitioner had taken a reasonable step to serve the petition on the respondent's solicitor's firm which is ready and willing to accept service on behalf of the respondent.

The mode of service in r 10 appears to be directory only, the word used is 'may'. In the event that a person does not send or leave at the office of the registrar, a formal writing stating that he will appoint an advocate or he intends to act for himself and no address is given, should there be a petition which affects him, a personal service may be effected. The discretion is with the court to decide whether it is sufficient if service is effected by serving the petition on him, eg on the respondent's solicitor's firm as in this case.

Ssubsequent appointment of an advocate to act for him under r 10 does not invalidate the service which had been affected earlier. I hold that in the circumstances, the notice had been served on the respondent, and r 15 is satisfied.

In another case, learned counsel submitted that a personal service was bad as it was not one of the modes prescribed by r 15. In my view, a personal service has been proven, which is undoubtedly the best form of service and it satisfies r 15; see *Chong Thain Vun*'s case and the *Re Telok Blangah Election* case.

The Electoral Roll

The second topic was that an electoral roll is open to challenge for illegality.

The Federal Constitution ('the Constitution') established an Election Commission whose duty is to see and conduct a fair and democratic election in the country. For the purpose of carrying out its function the Election Commission may make rules and regulations which must be consistent with the Federal laws

Article 113(5) of the Constitution expressly provides that:

> So far as may be necessary for the purposes of its function under this Article the Election Commission may make rules, but any such rules shall have effect subject to the provisions of federal law.

Thus, the Election Commission is empowered to make rules, inter alia, to prepare an electoral roll which must not be inconsistent with the Constitution. Article 119(1) of the Constitution states:

> Every citizen who —
>
> (a) has attained the age of twenty-one years on the qualifying date; and
>
> (b) is resident in a constituency on such qualifying date or, if not so resident, is an absent voter,
>
> is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified under Clause (3) or under any law relating to offences committed in connection with elections; but no person shall in the same election vote in more than one constituency.

It is clear that under art 119 of the Constitution, only citizens, unless disqualified, have the right to vote. In other words, the right to vote is conferred by the Constitution only on citizens. This right is an exclusive right of citizens, which is non-alienable and cannot be bought or sold. In compiling an electoral roll, in Sabah it is governed by the Election (Registration of Electors) Regulations (Sabah) 1971, which is made pursuant to s 15 of the Election Act 1958, it is the primary duty of the Election Commission to see that only citizens are registered as voters and non-citizens, eg illegal immigrants and those who are not entitled to vote, must not be registered as voters or put on an electoral roll. An electoral roll which contains the names of non-citizens is wrong *ex necessitate legis*. If it is alleged that an electoral roll is illegal because it carries the names of non-citizens etc then the court may inquire into the alleged illegality within the spirit of the Constitution.

It is of paramount importance that the registration of voters must be in accordance with laws passed by Parliament which laws must be consistent with the Constitution. The doctrine of the supremacy of Parliament as applied in the United Kingdom, does not apply in Malaysia. In *Ah Thian v Government of Malaysia* [1976] 2 MLJ 112, Tun Suffian LP said at p 113:

> Here we have a written constitution. The power of Parliament and of State legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.

Under our Constitution written law may be invalid on one of these grounds:

(1) in the case of Federal written law, because it relates to a matter with respect to which Parliament has no power to make law, and in the case of State written law, because it relates to a matter with respect to which the State legislature has no power to make law — art 74; or

(2) in the case of both Federal and State written law, because it is inconsistent with the Constitution — art 4(1); or

(3) in the case of State written law, because it is inconsistent with Federal law — art 75.

The court has power to declare any Federal or State law invalid on any of the above three grounds.

The court's power to declare any law invalid on grounds (2) and (3) is not subject to any restrictions, and may be exercised by any court in the land in any proceeding whether it be started by government or by an individual.

The court, ie the High Court, may declare invalid any law enacted by Parliament or a State Legislature which is inconsistent with the Constitution, and an Election Court has no less the same jurisdiction. The Election Court has the jurisdiction to hear and determine the legality of an electoral roll and there is no law that prohibits the hearing of such challenges made against an electoral roll in an Election Court. An electoral roll is prima facie evidence that a person is entitled to vote in a constituency, vide regulation 14 of the Election (Conduct of Elections) Regulation 1981. If it should appear that there is evidence to show that non-citizens have been registered in an electoral roll as voters, that electoral roll is tainted by an illegality for the inclusion of non-citizens in an electoral roll, contrary to the law. In my view, an electoral roll which contravenes the provisions of the election laws and the Constitution, and admits non-citizens or those citizens who are disqualified by the law, may be challenged. Needless to say, an electoral roll may be challenged on the grounds of illegality in that non-citizens' names have inadvertently been entered into the roll, and the Election Court may make such a declaration that an electoral roll is illegal as contrary to federal law and therefore, is null and void.

In *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697, the Supreme Court declared that art XXXIA of the Kelantan Constitution is inconsistent with the Federal Constitution. Article 4(1) states:

> This Constitution in the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

In *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187, his Lordship Raja Azian Shah J (as His Royal Highness then was) said at p 188:

> The constitution is not a mere collection of pious platitudes. It is the supreme law of the land embodying three basic concepts: One of them is that

A the individual has certain fundamental rights upon which not even the power of the State may encroach. The second is the distribution of sovereign power between the States and the Federation, that the 13 States shall exercise sovereign power in local matters and the nation in matters affecting the country at large. The third is that no single man or body shall exercise complete sovereign power, but that it shall be distributed among the Executive, Legislative and Judicial branches of government, compendiously expressed in modern terms that we are a government of laws, not of men.

B

There is no written law which provides that an electoral roll cannot be challenged by way of an election petition.

C It had been brought to the attention of this court the decisions in *Wong Phin Chung v The Election Commission & Ors* and *Tg Nawawi bin Tengku Ab Kadir @ T Putra v Lokman Bin Muda & Ors* [1996] 1 CLJ 551, but they can be distinguished in that the decisions therein are peculiar to the facts in each case and there is no challenge made against the validity of an electoral roll which had been certified as correct. Moreover, they are the decisions of D courts of co-ordinate jurisdiction whose decisions are persuasive only. It is useful to quote Wan Yahya J (as he then was) in *Bong Geok Beng v Ahmad Nordin bin Mohamed Amin & Anor* [1980] 1 MLJ 167 at p 168:

> The prerogative of determining the correctness or otherwise of High Court decisions lies with the court above. For the purpose of deciding this issue I shall confine myself only to the question whether that judgment is sufficiently persuasive to move this court into applying it in the present case.

E

In *PP v Lau Kee Hoo* [1983] 1 MLJ 157, Tun Suffian LP declined to follow the Indian cases and said at p 160:

F

> With respect we declined to do so, because, first there is no knowing how long we would have to wait and, secondly, we should decide cases before us in the light of our own constitution, our own laws and the conditions in our own country which are not necessarily the same conditions in other countries.

G In my judgment, an Election Court has the jurisdiction to hear a challenge in respect of an electoral roll which is vitiated by an illegality, eg the entry into an electoral roll of names of non-citizens or disqualified citizens who are not entitled to vote in any election to Parliament or State Assembly. I hasten to add that I find no provision in any written law that prohibits a challenge to an electoral roll in an Election Court and that it may be brought H before another forum which forum has not been established by the law.

Striking out petition under O 18 r 19 of Rules of the High Court 1980

The principle is very well settled that 'it is only in plain and obvious' cases that recourse should be had to the summary process under O 18 r 19 of the I Rules of the High Court 1980.

'The summary procedure under this Rule can only be adopted when it can clearly be seen that a claim or answer is on the face of it

"obviously unsustainable" ': per Lord Lindley in *Attorney General of Duchy of Lancaster v London & North Western Railway Co* [1892] 3 Ch 274; see also *Sim Kee Chon v Superintendent of Pudu Prison* [1985] 2 MLJ 385 (SC).

In *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd* [1993] 3 MLJ 36, the Supreme Court held that (at p 43):

> The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the RHC are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule (per Lindley MR in *Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd* [1899] 1 QB 86), and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (see *AG of Duchy of Lancaster v L & NW Rly Co* [1892] 3 Ch 274). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (see *Wenlock v Moloney & Ors* [1965] 1 WLR 1238, [1965] 2 All ER 871). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O 33r 3 (which is pari materia with our O 33 r 2 of the RHC) (see *Hubbuck & Sons Ltd v Wilkinson, Heywood & Cleark Ltd*).

The words 'frivolous or vexatious' as stated in *Mallal's Supreme Court Practice* (2nd Ed) Vol I, at p 222 means:

> By this is meant a case which is obviously frivolous or vexatious or obviously unsustainable, per Lindley LJ in *Attorney-General of the Duchy of Lancaster v London & North Western Railway Co* [1892] 3 Ch 277. The pleading must be 'so clearly frivolous that to put it forward would be an abuse of the process of the court' per Jeune P in *Young v Holloway* [1895] P 87 at p 90.

An application for striking out a petition simply based on the ground that there are insufficient particulars therein cannot be a good reason for striking out the petition.

Halsbury's Laws of England Vol 37 (4th Ed), para 430 states:

> The court is invested with extensive powers to strike out pleadings and thereupon, or for other good reason arising from the making of the claim or defence, to dismiss actions by the plaintiffs or to enter judgments against defendants. These powers are both salutary and necessary not only to enforce the basic rules of pleadings but also to dispose of proceedings which are hopeless, baseless or without foundation in law or in equity or are otherwise an abuse of the process of the court.

The pleadings must be hopeless, baseless or without foundation in law or in equity or an abuse of the process of the court before they can be struck out under this r 19 of O 18. This is well reflected in *Raja Zainal Abidin Bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd* [1993] 3 MLJ 16, where the Supreme Court stated at pp 23–24 that:

> It is to be remembered that the High Court always has an inherent jurisdiction to prevent abuse of its process irrespective of whether it is expressly called for or not in an application under O 18 r 19 unless such application is limited

A solely to the ground that any pleading does not disclose a reasonable cause of action or defence as the case may be.

In my judgment, lack of particulars in an election petition is not a ground simpliciter to strike out a petition. The particulars, if insufficient, may be obtained from the petitioner by adopting the procedures as laid down in the B Rules of the High Court 1980.

Preliminary objections dismissed.

Reported by Benjamin Yong

C

D

E

F

G

H

I